

Office of Federal Land Policy

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January 31, 2000

David S. Guzy, Chief
Rules and Publications Staff
Royalty Management Program
Minerals Management Service
PO Box 25165, M.S. 3021
Denver, CO 80225-0165

RE: Establishing Oil Value for Royalty Due on Federal Leases (64 FR 73820)

Dear Mr. Guzy:

The State of Wyoming's Office of Federal Land Policy notified affected State agencies of the above-referenced *Federal Register* notice, for agency review in accordance with State Clearinghouse procedures. Attached are letters from the Wyoming Department of Audit - Mineral Audit Division, and from the Minerals and Royalty Division of the Office of State Lands and Investments. State agency comments are specific to their respective agency missions. While the State defers to their technical expertise in developing the State's position, the responsibility to articulate the official State policies and positions lies with the Governor or the Office of Federal Land Policy.

The State of Wyoming has several concerns with the calculations in the proposed valuation regulations. We are also very concerned that the regulations, as proposed, do not implement Congressional intent that the Minerals Management Service work with the states on these issues. Wyoming will consider litigation if the proposed regulations are not revised to include coordination with the states. Please see the attached comments for further detail and legal citations.

This Office will need four copies of future information and documents regarding these proposed regulations, for distribution to affected State agencies. *Please note our change of address from 3rd floor west to 1st floor west, and our new fax number.* Existing Memoranda of Understanding and other working agreements with individual agencies remain in place and unaffected.

Thank you for this opportunity to comment

Sincerely,



Carol Kruse
Planning Consultant

Encl



STATE OF WYOMING

DEPARTMENT OF AUDIT

MINERAL AUDIT DIVISION

(307) 777-6663 Fax (307) 777-5341 Email: sdilsa@minad.state.wy.us

Jim Geringer
Governor

Michael Geseey
Director

Steve Dilsaver
Administrator

January 31, 2000

Memorandum

TO: Art Reese, Director Federal Land Policy

FROM: Steve Dilsaver SD

RE: Proposed Rules Establishing Oil Value for Royalty Due on Federal Leases.
Comment period ending January 31, 2000.

The opportunity to comment on this extremely important change in valuation methodology for federal royalty purposes is very much appreciated.

Wyoming's position is that any determinations that are binding on the State of Wyoming pursuant to §206.107 of the proposed rule for *Establishing Oil Value for Royalty Due on Federal Leases* need to be "jointly determined" by MMS and the States as partners. The rule-making power granted to an administrative agency charged with administration of a federal statute is not the power to make law; rather, it is the power to adopt regulations to carry into effect the will of Congress as expressed in the statute. Clearly the Federal Oil and Gas Royalty Simplification and Fairness Act of 1996 (RSFA) expresses that the will of Congress is for States and MMS to work together as partners.

This desire on the part of Congress is unquestionably expressed in RSFA's section dealing with marginal properties where the Statute explicitly expressed that "the United States and the States, shall jointly determine, on a case by case basis, the amount of what marginal production from a lease or leases or well or wells, or parts thereof, shall be subject to a prepayment under subsection (b) or regulatory relief under subsection (c)." Given that Wyoming has a great deal of production from marginal properties, any determination under the §206.107 of the proposed rule for *Establishing Oil Value for Royalty Due on Federal Leases* that has a binding effect on the State, but is not "jointly determined" with the State violates the will of Congress as expressed in the statute. We see no provision in the current proposed rules to allow the State to work with MMS.

Furthermore, throughout RSFA the language of "Secretary or delegated state" is pervasive and clearly indicates that Congress intends for the Secretary and the States to work together to administrate federal royalty collection, the proposed rules provide no means for the State to participate. MMS should forgo final rule making until such provisions are added to the rules. This will save both the State and MMS the cost of litigation to set the rules right.

STATE OF WYOMING

Office of State Lands and Investments

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January 19, 2000

Memorandum

TO: Art Reese, Director Federal Land Policy

FROM: Harold Kemp *[Signature]*

SUBJECT: Department of the Interior - Minerals Management Service - 30 CFR Part 206 - Establishing Oil Value For Royalty Due on Federal Leases - Supplementary Proposed Rule

Comments have been solicited by the MMS, Chief, Rules and Publications Staff, Denver, for the subject supplementary rulemaking, due January 31, 2000. The following comments are proffered for the Office of Federal Land Policy pursuant to its role as comment focus and coordinator for federal rule changes:

Proposed paragraph Section 206.103(b)(3)(iii) relates to the adjustment of daily mean spot price (Cushing) averages for location and quality. Where do these "numbers" come from outside of the lessee's having sales/exchange contracts from which to draw the information. What will be the basis for location and quality differentials as required by MMS?

Proposed paragraph Section 206.111(g)(3) would provide that even after a transportation system has been depreciated to a value below or equal to ten percent of the lessee's original capital investment, lessees may include in their transportation cost allowance, an amount equal to ten percent of their initial investment in the transportation system multiplied by an accepted rate of return.

After allowing for a return of investment through depreciation, which yields its own federal and state tax ramifications, it seems incongruous with the meaning of the term "royalty" to allow a deduction for an opportunity cost choice, i.e., investing in a transportation system as opposed to stocks or bonds.

Return on investment is not, by law, allowed as a deduction pursuant to the calculation of royalties in Wyoming. Why should such an allowance continue to provide an additional vehicle to diminish federal royalties as under this proposal?

Considerable language is devoted in the rule-making to an appropriate rate of return pursuant to effecting cost deductions for royalty purposes on transportation systems. This deduction is tantamount to a reward for making an opportunity cost choice in a transportation system, a business endeavor to move production, as opposed to investing in some other commercial or financial undertaking. None should be allowed what so ever as a deduction.